



ATTORNEY GENERAL OF TEXAS
GREG ABBOTT

May 5, 2011

Ms. Chris G. Elizalde
Walsh, Anderson, Brown, Gallegos, and Green, P.C.
P.O. Box 2156
Austin, Texas 78768

OR2011-06186

Dear Ms. Elizalde:

You ask whether certain information is subject to required public disclosure under the Public Information Act (the "Act"), chapter 552 of the Government Code. Your request was assigned ID# 416424.

The Granbury Independent School District (the "district"), which you represent, received two requests from the same requestor for records pertaining to an improper relationship between two named employees. You state the district is providing access to or copies of some information to the requestor. You claim the submitted information is excepted from disclosure under sections 552.101, 552.102, and 552.137 of the Government Code. We have considered the exceptions you claim and reviewed the submitted information.

Section 552.101 of the Government Code excepts from disclosure "information considered to be confidential by law, either constitutional, statutory, or by judicial decision." Gov't Code § 552.101. This exception encompasses information other statutes make confidential. Section 21.355 of the Education Code provides that "[a] document evaluating the performance of a teacher or administrator is confidential." Educ. Code § 21.355. Additionally, the court has concluded that a written reprimand constitutes an evaluation for purposes of section 21.355 as it "reflects the principal's judgment regarding [a teacher's] actions, gives corrective direction, and provides for further review." *North East Indep. Sch. Dist. v. Abbott*, 212 S.W.3d 364 (Tex. App.—Austin 2006, no pet.). This office has

interpreted section 21.355 to apply to any document that evaluates, as that term is commonly understood, the performance of a teacher or an administrator. *See* Open Records Decision No. 643 (1996). In Open Records Decision No. 643, we concluded that a “teacher” for purposes of section 21.355 means a person who (1) is required to and does in fact hold a certificate or permit required under chapter 21 of the Education Code and (2) is teaching at the time of his or her evaluation. *Id.* We also have determined that the word “administrator” in section 21.355 means a person who is required to and does in fact hold an administrator’s certificate under subchapter B of chapter 21 of the Education Code and is performing the functions of an administrator, as that term is commonly defined, at the time of the evaluation. *Id.*

You assert Exhibit 2 consists of written reprimands that are confidential under section 21.355. You state both of the named individuals at issue held the appropriate certification at the time of the evaluation. Based on your representations and our review, we agree that the documents in Exhibit 2 constitute evaluations as contemplated by section 21.355. Accordingly, the district must withhold Exhibit 2 under section 552.101 in conjunction with section 21.355 of the Education Code.¹

Section 552.101 of the Government Code also encompasses the common-law right of privacy, which protects information if it (1) contains highly intimate or embarrassing facts, the publication of which would be highly objectionable to a reasonable person, and (2) is not of legitimate concern to the public. *Indus. Found. v. Tex. Indus. Accident Bd.*, 540 S.W.2d 668, 685 (Tex. 1976). To demonstrate the applicability of common-law privacy, both prongs of this test must be satisfied. *Id.* at 681-82. The types of information considered intimate and embarrassing by the Texas Supreme Court in *Industrial Foundation* included information relating to sexual assault, pregnancy, mental or physical abuse in the workplace, illegitimate children, psychiatric treatment of mental disorders, attempted suicide, and injuries to sexual organs. *Id.* at 683. Whether information is subject to a legitimate public interest and therefore not protected by common-law privacy must be determined on a case-by-case basis. *See* Open Records Decision No. 373 (1983).

This office has noted the public has a legitimate interest in information that relates to public employees and their conduct in the workplace. *See, e.g.*, Open Records Decision Nos. 562 at 10 (1990) (personnel file information does not involve most intimate aspects of human affairs but in fact touches on matters of legitimate public concern), 470 at 4 (1987) (job performance does not generally constitute public employee’s private affairs), 444 at 3 (1986) (public has obvious interest in information concerning qualifications and performance of government employees), 405 at 2 (2983) (manner in which public employee’s job was performed cannot be said to be of minimal public interest), 392 (1982) (reasons for

¹As our ruling is dispositive, we need not address your remaining arguments against disclosure of this information.

employee's resignation ordinarily not private). Upon our review, we find no portion of Exhibit 3 is highly intimate or embarrassing information of no legitimate public interest. Accordingly, no portion of Exhibit 3 may be withheld under section 552.101 in conjunction with common-law privacy.

You claim Exhibit 3 is excepted from disclosure under section 552.102 of the Government Code. Section 552.102(a) excepts from disclosure "information in a personnel file, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy." Gov't Code § 552.102(a). Upon review, we find none of the information in Exhibit 3 is excepted under section 552.102(a) of the Government Code.

Lastly, you claim Exhibit 4 contains the e-mail address of a member of the public. Section 552.137 provides that "an e-mail address of a member of the public that is provided for the purpose of communicating electronically with a governmental body is confidential and not subject to disclosure under [the Act]," unless the owner of the e-mail address has affirmatively consented to its release or the e-mail address is specifically excluded by subsection (c). *Id.* § 552.137(a)-(c). You have marked an e-mail address in Exhibit 4 which is not of the types specifically excluded by section 552.137(c) of the Government Code. Accordingly, the district must withhold the e-mail address you have marked in Exhibit 4 under section 552.137 of the Government Code, unless the owner consents to its disclosure.²

In summary, the district must withhold Exhibit 2 under section 552.101 in conjunction with section 21.355 of the Education Code. The district must withhold the e-mail address you have marked in Exhibit 4 under section 552.137 of the Government Code, unless the owner consents to its disclosure. As you raise no further exceptions to disclosure, the remaining information must be released to the requestor.

This letter ruling is limited to the particular information at issue in this request and limited to the facts as presented to us; therefore, this ruling must not be relied upon as a previous determination regarding any other information or any other circumstances.

This ruling triggers important deadlines regarding the rights and responsibilities of the governmental body and of the requestor. For more information concerning those rights and responsibilities, please visit our website at http://www.oag.state.tx.us/open/index_orl.php, or call the Office of the Attorney General's Open Government Hotline, toll free, at (877) 673-6839. Questions concerning the allowable charges for providing public information

²In Open Records Decision No. 684 (2009), this office issued a previous determination to all governmental bodies authorizing them to withhold ten categories of information, including the e-mail address of a member of the public under section 552.137, without the necessity of requesting an attorney general decision.

under the Act must be directed to the Cost Rules Administrator of the Office of the Attorney General, toll free at (888) 672-6787.

Sincerely,

A handwritten signature in black ink, appearing to read "Sean Nottingham". The signature is fluid and cursive, with the first name "Sean" and last name "Nottingham" clearly distinguishable.

Sean Nottingham
Assistant Attorney General
Open Records Division

SN/eeg

Ref: ID# 416424

Enc. Submitted documents

c: Requestor
(w/o enclosures)